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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JENNIFER NICOLE BUDRE,

Defendant and Appellant.

F078049

(Super. Ct. No. MCR044701A)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Madera County. Joseph A. Soldani, Judge.

Thomas Owen, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Erin Doering, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Franson, Acting P.J., Smith, J. and Snauffer, J.

## **INTRODUCTION**

Appellant Jennifer Nicole Budre was convicted of 12 counts of animal cruelty, in violation of Penal Code<sup>1</sup> section 597, subdivision (b). Her conviction is the subject of an appeal in case No. F076963. In this appeal, she challenges the imposition of a 15 percent collection fee on the restitution fine of \$84,804.32. We strike the 15 percent collection fee as unauthorized.

## **FACTUAL AND PROCEDURAL SUMMARY**

Because Budre's sole contention in this appeal is that the 15 percent collection fee imposed on the restitution fine is unauthorized, we dispense with a detailed recitation of the facts.

The trial court held a restitution hearing on July 13, 2018, wherein the People requested Budre be ordered to pay restitution in the amount of \$215,143.50 pursuant to section 597, subdivision (g)(1). After hearing testimony, the trial court took the matter under submission.

In the restitution order filed on July 19, 2018, the trial court ordered Budre to pay restitution in the amount of \$84,804.32 "plus 15% for cost of collection." The restitution order purported to be based on section 1202.4.

Budre filed an appeal from the restitution order on August 31, 2018.

## **DISCUSSION**

In this appeal, Budre does not dispute the amount of the restitution order. She contends section 597, subdivision (g)(1) is the proper basis of a restitution order and that a 15 percent collection fee pursuant to section 1202.4 is unauthorized. The People agree with Budre.

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<sup>1</sup> References to code sections are to the Penal Code.

### ***Standard of Review***

The standard of review for a restitution order is abuse of discretion, but a restitution order “ ‘resting upon a “ ‘demonstrable error of law’ ” ’ ” constitutes an abuse of the trial court’s discretion. (*People v. Duong* (2010) 180 Cal.App.4th 1533, 1537.) Here, the parties agree the imposition of a 15 percent collection fee is contrary to established law.

### ***Analysis***

The restitution order provides that Budre pay \$84,804.32 to Madera County Animal Services for the maintenance of the horses seized from Budre. The order erroneously cites section 1202.4 as a basis for the order. The correct basis for the restitution order is section 597, subdivision (g)(1).

Section 1202.4 provides that the victim of a crime who incurs an economic loss shall receive restitution directly from the defendant convicted of the crime. (§ 1202.4, subd. (a)(1).) Section 1202.4, subdivision (k) defines those persons and entities that qualify as victims of a crime, for purposes of a restitution order pursuant to this section. Only the direct victim of a crime is entitled to direct restitution under section 1202.4. (*People v. Birkett* (1999) 21 Cal.4th 226, 246.) Madera County Animal Services does not qualify as a direct victim of Budre’s crime and is not a victim as defined in section 1202.4, subdivision (k).

Section 597, subdivision (g)(1) provides that if a person is convicted of causing or permitting an act of animal cruelty, all animals seized and impounded as a result shall be forfeited and awarded to the impounding officer for proper disposition. In addition, the person “shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.” (§ 597, subd. (g)(1).) There is no provision for any additional charge as a collection fee.

Just as a hospital cannot receive direct restitution under section 1202.4 for medical services provided to a victim of a crime, Madera County Animal Services cannot receive direct restitution from Budre pursuant to section 1202.4. (See *People v. Slattery* (2008) 167 Cal.App.4th 1091, 1097.)

We will direct the trial court to amend the July 19, 2018 restitution order by striking the imposition of a 15 percent collection fee and reflecting that restitution is ordered pursuant to section 597, subdivision (g)(1).

### **DISPOSITION**

The imposition of restitution in the amount of \$84,804.32 is affirmed. The imposition of a 15 percent collection fee on the restitution amount is stricken.

The trial court is directed to modify the July 19, 2018 restitution order to reflect that restitution is imposed pursuant to section 597, subdivision (g)(1) and not section 1202.4, and to strike the 15 percent collection fee.